CF0000060445

CrA/M 39/96

Division Bench

(2)

XII-46 (Jail)
C.P.C.—5.(II)-9-91

APPEAL OF PRISONER

No. 1007 Name देवला

Father's name रामसुख Ram Sukhar

Amended as per Court order dated 26/2/2007 Reg. No. 2007/Jail

Resident सलवाही थाना वसन्तपुर

Sentenced to आजीवन कारावास on श्रीमती मोहन गर्ग प्रथम अपर सत्र न्यायाधीश अम्बिकापुर

Under section 395, 397, एवं 302 IPC

It is explained to the prisoner that if he wishes to be represented by a legal practitioner, the Appellate Court will not proceed with the case for seven days to allow the legal practitioner to appear. If the legal practitioner does not appear within seven days it may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date of which Copy received 23.07.96

3 Date on which Appeal sent 26.07.96

4 Whether the prisoner wishes to be represented or not Yes

High Court of Madhya Pradesh JABALPUR
Received on 20 AUG 96
Registration No. 170

No. 1007

Confined in 23.07.96 Jail Ambikapur

No. 1780 dated 26.07.96 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

नोट:- इसी क्रमांक 1006 ही रामलाल व रामसुख के अपीलके साथ सिर्फ प्रतिलिपि संलग्न है

Superintendent-Central Distt / Sub-Jail
अधीक्षक केन्द्रीय जिला/उपजेल अम्बिकापुर (सरगुजा)
26/7/96

Date of receipt in C. J. M.'S Office 26/7/96

Date of receipt of record to accompany Memo of Appeal of the Appellate Court 8/8/96

No. Dated 9/8/96 198

Forwarded to the मानवीय 3रा अतिरिक्त जिला न्यायाधीश

C.J.Magistrate
अतिरिक्त जिला मजिस्ट्रेट
अम्बिकापुर, जिला सरगुजा (म.प्र.)

Date of receipt in Appliate Court

(P.T.O.)

XI-HC-78

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. No. 1438/96

मामला क्रमांक ~~Cr.A.No.1439/96~~ **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

26-2-2007

Shri Rajesh Jain, Advocate for the appellants.

Shri Akhil Mishra, Panel Lawyer for the respondent/State.

Heard on I.A. No. 3751/2002 filed in Criminal Appeal No. 1439/1996 for permission to amend father's name of appellant Dewala.

Application is allowed. Counsel for appellant is directed to carry out the amendment during the course of the day.

Since the appellants in Cr. Appeal No.1438/1996 & Cr. Appeal No. 1439/1006 are in detention since 17-3-1994, as they have not been able to furnish bail bonds, therefore with the consent of learned counsel for respective parties, these two appeals are being disposed of finally by this common judgment as they arise out of same crime number.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

These appeals are directed against the judgment of conviction and order of sentence dated 23.7.1996 passed by 1st Additional Sessions Judge, Ambikapur, District Sarguja in S.T. No.220/94, whereby the learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 395 read with 397 & Section 302 of the Indian Penal Code, sentenced them to undergo ten years' R.I. and imprisonment for life respectively. Both the sentences are directed to run concurrently.

2. Case of the prosecution in brief is that P.W. 4 Devsharan's sister and uncle were in jail in connection with murder, therefore on 13-3-1994

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मामला क्रमांक ..... Cr.A.No. 1438/96 Cr.A.No.1439/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Lachhminia (since deceased) was going to Ambikapur with Rs. 5,000/- for the purpose of bail of the sister and uncle of Devsharan. On next day morning, Nanhu informed Devsharan and his wife Dev Kumari in the field that his mother is lying dead near Mahua Bhatti. On hearing this, they reached to the spot and saw that Lachhminia was lying dead, there was crush injury on her head and brain material was coming out of the skull. Devsharan came to his village and informed Rambaksh (P.W. 5), Manraj, Suresh (P.W.3) etc. Devsharan found clothes of his mother but the currency notes of Rs. 5,000/- were missing, therefore, he lodged report of the incident under Ex. P-3 in the Police Station, Basantpur. S.H.O. R.P. Singh (P.W.9) left for the scene of occurrence, after issuing notice under Ex. P-15, prepared inquest under Ex. P-16 on the dead body of Lachhminia. Body of Lachhminia was sent for post mortem examination under Ex. P-18 with Police Constable Ram Prakash. Dr. Govind Singh (P.W. 7) conducted post mortem and prepared post mortem report Ex. P-13. The Investigating Officer prepared site plan under Ex. P-17. During the investigation, while in police custody, accused Heeralal alias Lallu gave memorandum under Ex. P-5 regarding currency notes, in pursuance of that, he got recovered under Ex. P-6 one green colour old terricot pant stained with blood, one blue colour shirt stained with blood and Rs. 25/-, 2 notes of Rs. 10/- denomination and one note of Rs. 5/- denomination stained with blood. Accused Dewala, while in the police custody, gave memorandum under Ex. P-7 and in pursuance of that, five notes of Rs. 500/- denomination stained with blood, 4 notes of Rs. 50/- denomination, one *Chaddi* were taken into possession under Ex. P-8. Axe- the weapon of offence, was taken into possession under Ex. P-9, plain soil and blood stained soil were taken into possession under Ex. P-

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मामला क्रमांक Cr. A. No. 1438/96 Cr. A No. 1439/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10 from the place of occurrence. One Sandow Baniyan, one towel of green colour of the accused were taken into possession under Ex. P-11 from accused-appellant Dewala, one white Paijama of accused Dewala was taken into possession under Ex. P-12. Rs. 1100/- i.e. 22 notes of Rs. 50/- denomination and one lungi were taken into possession under Ex. P-20 from Rajpati, sister of accused Heeralal. Pieces of nails of accused Heeralal were taken into possession under Ex. P-21. The recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where Report Ex. P-26 was received. Blood stained articles were sent for serologist report, from where Report Ex. P-29 was received. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ramanujganj who in turn committed the case to the Sessions Judge, Ambikapur from where learned Additional Sessions Judge received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused persons examined 10 witnesses. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and they have been falsely implicated in the crime in question. Learned Additional Sessions Judge after hearing learned counsel for respective parties convicted and sentenced the accused persons as aforementioned.

4. We have heard Shri Rajesh Jain, Advocate on behalf of accused-appellants and Shri Akhil Mishra, Panel Lawyer on behalf of the State.

5. Shri Jain has not disputed the homicidal death of Lachhminia, more over Dr. Govind Singh (P.W. 7) has stated that on 15-3-1994 he was Assistant Surgeon of Primary Health Centre, Wadrafnagar. On that day,

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मामला क्रमांक ...Cr.A. No. 1438/96... **सन् 200**
Cr. A. No. 1439/96

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

he conducted post mortem on the body of Lachhminia, wife of Rajaram. He noticed that there was injury on right side on the head bone, skull bone was fractured and brain material was visible. He further stated that it was not possible for him to give cause of death, however he stated that the injuries found on the head were sufficient to cause death in the ordinary course of nature, these injuries were ante mortem and homicidal in nature. As per report Ex. P-28 sent by Dr. D. K. Satpathy, deceased Lachhminia has died as a result of homicidal injury. Therefore, in view of the above, it is established that the death of Lachhminia was homicidal in nature.

6. So far as involvement of the accused-appellants in the crime in question is concerned, there is no direct evidence to connect the accused-appellants with the crime. The whole case rests upon the circumstantial evidence. The prosecution has tried to establish the charge against the accused based on the following circumstances:-

i. that the deceased was last seen with accused-appellants Dewala and Heeralal when she was alive;

ii. that at the instance of the accused Dewala, Rs. 2500/- stained with blood and 4 currency notes of Rs. 50/- each were recovered and Baniyan, towel and Paijama of the accused were also recovered. Nails of accused Heeralal stained with blood were taken into possession. At the instance of accused Heeralal Rs. 1100/- were recovered from her sister's residence and pant and shirt were recovered.

7. In order to establish these circumstances, the prosecution has examined P.W. 4 Devsharan, son of the deceased, who has stated that

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मामला क्रमांक G.A. No. 1438/96 Cr.A. No. 1439/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his mother went to Ambikapur to get his father released on bail and she was having Rs. 40150/- with her. On enquiry, his niece Devanti disclosed that his mother went along with Heeralal and Dewala. Devanti has been examined as P.W. 2, who has turned hostile and not supported the evidence of P.W. 4 Devsharan. She has not stated that she disclosed to Devsharan that she saw the deceased going with Heeralal and Dewala. P.W. 4 Devsharan, son of the deceased had not seen Lachhminia accompanying the accused appellants Heeralal and Dewala. His evidence is to the effect that his niece Devanti informed him that she saw Lachhminia with accused Heeralal and Dewala whereas P.W. 2 Devanti has not supported the above evidence of P.W. 4 Devsharan. Therefore, there is no evidence on record to establish the fact that Lachhminia (since deceased) was last seen in the company of accused Dewala and Heeralal just before her death. Even this last seen fact has not been mentioned in the F.I.R., therefore, the prosecution has utterly failed to establish the last seen theory.

8. As far as recovery of blood stained currency notes to the tune of Rs. 2500/- from the possession of the accused Dewala under Ex. P-8 and blood stained Baniyan, towel and Paijama of accused Dewala is concerned, in the F. S. L. report under Ex. P-26, it has been mentioned that on the towel and Paijama, blood was found whereas in Baniyan, there was no blood. Similarly blood was found on the nail marked as 'j' whereas no blood was found on nail marked as 'l'. As per the Serologist report, human blood was found on currency notes and pant but there is no report regarding the blood group of blood found on these articles. In order to connect the accused persons with the crime in question, it was necessary for the prosecution to establish that human blood which was found on

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

these currency notes was of the blood group of the deceased, which the prosecution has been failed to establish. Merely on the basis of recovery of currency notes, the accused persons cannot be connected with the crime in question because there is nothing on record to show that these currency notes were in possession of the deceased Lachhminia. Similarly as far as accused Heeralal is concerned, though on his full pant and shirt, blood was found as per F.S.L. report but the blood was disintegrated, therefore, as per Serologist report, origin could not be determined. There is no report that the human blood of the blood group of the deceased was found on the clothes of accused Heeralal, as such, he cannot be connected with the crime in question.

9. For the foregoing reasons, there is no cogent and clear circumstantial evidence to connect the accused persons with the crime in question. Therefore, the conviction and sentence imposed upon the accused appellants cannot be sustained.

10. In the result, the appeals of accused appellants succeed and their conviction under Sections 395 read with Section 397 and Section 302 of I.P.C. and sentences imposed upon them under those sections are set aside. They are acquitted of the above charges. It is stated that the appellants are in detention since 17-3-1994, therefore it is directed that they be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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9.3.07